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No. (1)

Supreme Court, U.S.
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In The

Supreme Court of the United States

IN RE: JEFFREY S. PESARIK,

Petitioner.

On Petition For Writ Of Mandamus To The Supreme Court Of The State Of Washington

PETITION FOR WRIT OF MANDAMUS

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QUESTIONS PRESENTED FOR REVIEW

1.) Does the King County Local Rule 34 and the King County Local Family Law Rule (KCLFLR) 5(c)(6)(C) clearly state that only the Chief Civil Judge can hear and rule on a Motion to Vacate a mutually agreed-upon parenting plan?

2.) Did the King County Superior Court err in allowing Judge Steven Gonzalez who is not, and never was, a Chief Civil Judge to hear and rule on a Motion to Vacate a parenting plan?

3.) Did Judge Steven Gonzalez have jurisdiction and authority to hear or rule on this same Motion to Vacate a parenting plan?

4.) How will the U.S. Supreme Court mandate that the inferior court correct the error, reverse its improper ruling and make reparation to the aggrieved and injured victims, Jeffrey S. Pesarik and his daughters, Nicole Pesarik and Miranda Pesarik?

PARTIES TO THE PROCEEDING

The Parties to the proceeding are:

Petitioner – Jeffrey S. Pesarik

Respondents – The Honorable Steven C. Gonzalez; Chief Civil Judge/Chief Unified Family Court Judge, Glenna Hall, 2006-01/2007; Presiding Chief Civil Judge/Chief Unified Family Court Judge, James Doerty (Acting Chief UFC, 2006-01/2007).

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CITATIONS OF REPORTS OR OPINIONS ENTERED IN THE CASE

The Supreme Court of the State of Washington dismissed a Petition for Writ of Mandamus and denied a subsequent Motion for Reconsideration and/or In the Alternative Motion for Amendment of Judgment Under CR 59.

JURISDICTION

This Honorable Court has jurisdiction to issue extraordinary writs under 28 U.S.C. § 1651(a) and U.S. Supreme Court Rule 20, [especially] "in certain narrowly defined circumstances" where extreme violations have occurred.

CONSTITUTIONAL PROVISIONS INVOLVED IN THE CASE

The Constitutional provisions involved in the case are included in the Constitution of the United States of America being the Fifth Amendment and Fourteenth Amendment rights of due process and equal protection under the law.

STATEMENT OF THE FACTS

Petitioner Jeffrey S. Pesarik had in place a ***mutually agreed-upon*** parenting plan and Final

Divorce Decree from a family law case involving children, generated out of the King County Superior Court on June 28, 2006. (Emphasis added.) The opposing party in the aforementioned family law case filed a Motion to Vacate said parenting plan. The hearing on the Motion to Vacate was heard by Judge Steven Gonzalez who was not a Chief Unified Family Court Judge in King County Superior Court. Judge Steven Gonzalez and the Chief Unified Family Court Judge failed to abide by their own rules under Local Rule 34 and LFLR 5(c)(6)(C) in King County Superior Court.

Petitioner only recently learned of Judge Gonzalez's jurisdictional error regarding the trial court order and the corresponding remedy thereof. As explained and cited by KCLFLR 5(a)(5) and KCLFLR 5(a)(6)(C) in Petitioner's Petition for Writ of Mandamus, Judge Gonzalez had no jurisdiction to hear or rule on a Motion to Vacate of a mutually agreed-upon parenting plan. Judge Gonzalez's improper judicial decision has been appealed to the Washington Supreme Court and now must be ruled upon without view of state time constraints by this writ and the highest court ruling according to Federal statutes.

When there is lack of jurisdiction, there are no time limits. *State v. Littlefair*, 112 Wash.App. 749, 51 P.3d 116, Wash.App. Div. 2, August 02, 2002 (NO. 24924-3-II); *In re Hoisington*, 99 Wash.App. 423, 993 P.2d 296, Wash.App. Div. 3, February 22, 2000 (NO. 18621-1-III); *Griffith v. City of Bellevue*, 130 Wash.2d 189, 922 P.2d 83 Wash., September 12, 1996 (No.

63230-8); *Abillo-De Leon v. Gonzales*, 410 F.3d 1090, C.A.9, June 08, 2005 (No. 02-70246).

Judge Gonzalez clearly had no jurisdiction or authority to hear the King County Superior Court case no. 05-3-04584-5 SEA for a motion to vacate a parenting plan from a mutually agreed-upon parenting plan. Again, as stated in KCLFLR 5(a)(5), "... motions to ... vacate a judgment ... entered after trial ... such motions shall be noted before the Chief Civil Judge/RJC Judge or in family law cases involving children before the Chief Unified Family Court Judge." Furthermore, as stated by KCLFLR 5(a)(6)(C), "A motion to vacate an order ... the motion to vacate shall be noted before the Chief Civil/RJC Judge or in family law cases involving children before the Chief Unified Family Court Judge." Judge Gonzalez was not at the time the Chief Civil Judge, nor at any time has he been a Chief Unified Family Court Judge.

STATEMENT OF THE ISSUES

1.) Whether or not the King County Local Family Law Rules (KCLFLR) clearly state that a Motion to Vacate a parenting plan are to be heard by a Chief Unified Family Court Judge according to KCLFLR 5(a)(5) and KCLFLR 5(a)(6)(C) and KCLR 34.

2.) Whether or not Judge Steven Gonzalez in the King County Superior Court erred in hearing a Motion to Vacate a previously mutually agreed-upon parenting plan, as he was a ***non***-Chief

Unified Family Court Judge that heard and ruled on same Motion to Vacate a Parenting Plan.

3.) Whether or not Judge Steven Gonzalez had jurisdiction and authority to hear or rule on the Motion to Vacate a mutually agreed-upon parenting plan.

4.) Whether or not the actions of Judge Steven Gonzalez and the King County Court were improper, and whether or not the agreed upon parenting plan for Jeffrey S. Pesarik should have been vacated, and whether or not the parties affected, being Jeff Pesarik, Miranda Pesarik and Nicole Pesarik, should have been subject to the faulty administration of non-adherence to Local Rules and Federal and State Laws.

STATEMENT OF RELIEF SOUGHT

The Petitioner, Jeffrey S. Pesarik, moves this Honorable Supreme Court to enter an Order overturning an Order of September 7, 2006 by Judge Steven Gonzalez in the King County Superior Court. The Supreme Court must correct Judge Steven Gonzalez's King County Superior Court Order in the lower court in the administration of justice. The issue involved in this case needs the extraordinary remedy of mandamus. This Petition for Writ of Mandamus is necessary to compel the King County Superior Court to exercise its duty when it is its duty to do so, *Roche v. Evaporated Milk Association*, 319 U.S. 21, 63 S.Ct. 938 (1943). Judge Steven Gonzalez of The King

County Superior Court has made an error, inadvertence or mistake, and Petitioner brings to this Supreme Court's attention the error, inadvertence or mistake for the deliverance of justice. This record must be reversed and corrected and sealed immediately with an effective date on or before September 7, 2006 as Judge Steven Gonzalez should have never been hearing a case to vacate a parenting plan that was mutually agreed-upon in accordance with the King County Local Rules, most likely due to the highly technical and sophisticated nature of the matter. The plan agreed the mother could relocate to Texas with the children. If the father moved to Texas, it was agreed the father would have joint custody, on a 50/50 basis if he lived in Texas. Only the Chief Civil Judge/Chief Unified Family Court Judge shall hear a motion to vacate a mutually agreed-upon parenting plan in family law cases involving children. Again, due to the highly technical and sensitive nature involving a motion to vacate a mutually agreed-upon parenting plan, only the Chief Civil Judge/Chief Unified Family Judge could have heard this previous case. Any associated orders or actions in this case that hinged upon the erred ruling as of September 7, 2006 need to also be addressed and cleared from the record and the mutually agreed-upon parenting plan must be reinstated with damages awarded to Pesarik. Any rulings made after Judge Gonzalez ruled to vacate Pesarik's mutually agreed-upon parenting plan are additionally null and void and the Honorable Supreme Court must rule for a reinstatement of the

parenting plan as it was entered upon mutual agreement, on the date of June 28, 2006.

A Petition for Writ of Mandamus and Motion for Reconsideration and/or In the Alternative Motion for Amendment of Judgment Under CR 59 was filed in the Supreme Court of Washington on February 5, 2009, and March 9, 2009, respectively. Although the Supreme Court of Washington denied the petition and motions with findings of fact or conclusions of law, the Supreme Court of Washington stated this:

> "Clearly in this case such a procedural remedy was available, but the Petitioner failed to exercise it in a timely fashion, see KREIDLER V. EIKENBERRY, 111 Wn.2d 828, 838-839, 766 P.2d 438 (1989)." (See App. 2.)

Petitioner states in this Petition statutes and cases that rule that there are no time limits on jurisdictional issues.

In addition, Petitioner asks that this Court reverse any court costs previously awarded to opposing counsel and/or incurred by Petitioner in pursuing a remedy to reinstate the mutually agreed-upon parenting plan. Petitioner requests any other consideration that this Court deems appropriate as to the emotional damage that Petitioner and his daughters experienced from the five months that they were alienated from one another due to Judge Gonzalez's erroneous decision and order.

Also, Petitioner asks this Court to order the King County Court to strike from the record any and all

records subsequent to August 26, 2006, the date Judge Gonzalez began hearing a case he had no jurisdiction or authority to hear. Ignorance of the court rules and State and Federal laws are no excuse. The parenting plan should be reinstated, as it was mutually agreed-upon and entered on June 28, 2006.

REASONS WHY THE WRIT SHOULD ISSUE

Petitioner has been denied the right to a fair and legal hearing because the case was not heard by a proper judge according to KCLFLR 5(a)(5) and KCLFLR 5(a)(6)(C) which state,

> " . . . motions to . . . vacate a judgment . . . entered after trial . . . such motions shall be noted before the Chief Civil Judge/RJC Judge *or in family law cases involving children before the Chief Unified Family Court Judge.*" KCLFLR 5(a)(5) (Emphasis added.)

> "A motion to vacate an order . . . the motion to vacate shall be noted before the Chief Civil/RJC Judge *or in family law cases involving children before the Chief Unified Family Court Judge.*" KCLFLR 5(a)(6)(C) (Emphasis added.)

In the interest of fair play, equity, justice, due process and equal protection of the law, the Petitioner is entitled to fair and just rulings by a proper judge on the Motion to Vacate a parenting plan. The substantial due process rights of the Petitioner have

been violated causing the Court to lack personal and subject-matter jurisdiction over the Petitioner. When jurisdiction is void, any subsequent proceedings have no validity and are also necessarily void. Any resulting final judgments or orders from Judge Steven Gonzalez or any other non-UFC Chief Civil Judge of the King County Superior Court, in the aforementioned case, are void and of no effect, which means all subsequent rulings in the case are void, and the ruling on the Motion to Vacate a parenting plan must be immediately overturned or a miscarriage of justice will and has occurred.

Judge Steven Gonzalez of the King County Superior Court lacked jurisdiction and acted in a manner inconsistent with due process of law by refusal of adhering to the King County Local Rules, specifically KCLR 34 and LFLR 5(c)(6)(C), in this instant case.

While RAP 5.1(a), RAP 5.2(a) and RAP 2.1(b) require time limits and these time limits supersede previous time limits for extraordinary writs, RAP 5.2(e) allows for a time period other than 30 days after entry of the decision to which the motion is ruled upon being a motion for amendment of judgment under CR 59. A motion may be granted under this statute under certain causes materially affecting the substantial rights of a party as stated below:

> "Irregularity in the proceedings of the court . . . or any order of the court, or abuse of

> discretion, by which such party was prevented from having a fair trial." CR 59(a)(1).
>
> "That there is no evidence or reasonable inference from the evidence to justify the verdict or the decision, or that is contrary to law." CR 59(a)(2).

Judge Gonzalez used, in determining his ruling in the Motion to Vacate, an allegation that was not presented as evidence by either party. After all arguments were heard at the hearing, Judge Gonzalez decided to base his decision on the allegation which was based upon a perjured Declaration, that was not even introduced by either party at the hearing, because of the absurdity of the allegation and the Declaration not being credible.

"That substantial justice has not been done." CR 59(a)(9).

Petitioner's right to due process was violated as Judge Gonzalez's jurisdiction and authority over the Petitioner was not met as is a requirement or standard of fairness.

There is no other remedy to correct this egregious error. THEREFORE, IT IS Prayed that this Honorable Court grant this Petitioner's Motion for Reconsideration and/or In the Alternative Motion for Amendment of Judgment to remedy this egregious error for which there is no other remedy available for correction.

CONCLUSION

THEREFORE, IT IS Prayed that said Judge Steven Gonzalez of the King County Superior Court be ordered to overturn his ruling on the Petitioner's Motion to Vacate the parenting plan and a true and proper judge, being a Chief Unified Family Court Judge, be permitted to hear this motion.

Respectfully submitted,

September, 2009

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February 6, 2009

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RE: Supreme Court No. 82688-9 – Jeffrey S. Pesarik v. Judge Steven Gonzalez

Judge Gonzalez, Counsel and Mr. Pesarik:

On February 5, 2009, this Court received Mr. Pesarik's "PETITION FOR WRIT OF MANDAMUS" (petition), "DECLARATION OF SERVICE" and a check for the filing fee in the amount of $250.00. The matter has been assigned the above referenced Supreme court cause number. The following ruling is entered regarding said "PETITION FOR WRIT OF MANDAMUS":

The petition is dismissed. A review of the petition indicates that the Petitioner failed to seek review of the trial court order in question in a timely manner, and also failed to follow the appropriate appellate procedure for doing the same; in that regard see RAP 5.1(a), RAP 5.2(a) and RAP 2.1(b). This Court does not exercise its authority to grant relief on a petition for a writ in the absence of a clear showing that a party did not otherwise have a plain, speedy, and adequate remedy at law. Clearly in this case such a procedural remedy was available, but the Petitioner failed to exercise it in a timely fashion, *see KREIDLER V. EIKENBERRY*, 111 Wn.2d 828, 838-839, 766 P.2d 438 (1989).

Because only one filing fee is required, Mr. Pesarik's check #5386, that was received in December 2008, and is dated December 4, 2008, is being returned to him as an enclosure hereto.

Sincerely,

/s/ Ronald R. Carpenter
Ronald R. Carpenter
Supreme Court Clerk

RRC:alb
Enclosure for Mr. Pesarik as stated

THE SUPREME COURT
STATE OF WASHINGTON
[SEAL]

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March 9, 2009

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RE: Supreme Court No. 82688-9 – Jeffrey S. Pesarik v. Judge Steven Gonzalez

Judge Gonzalez, Counsel and Mr. Pesarik:

A "MOTION FOR RECONSIDERATION AND/OR IN THE ALTERNATIVE MOTION FOR AMENDMENT OF JUDGMENT UNDER CR 59" (motion) was received and filed on this date. The motion will be treated as a motion to modify the Clerk's ruling dated February 6, 2009.

The motion to modify is set for consideration by a Department of the Court on the Court's April 28, 2009, Motion Calendar. The motion will be determined without oral argument, see RAP 17.5(b).

Any answer to the motion should be served and received by this Court for filing by not later than April 8, 2009. Any reply to any answer should be served and received by this Court for filing by not later than April 20, 2009.

Sincerely,

/s/ Ronald R. Carpenter
Ronald R. Carpenter
Supreme Court Clerk

RRC:alb

Judicial Administration

Superior Court Clerk's Office

LFLR 5. WHERE TO SCHEDULE MOTIONS IN FAMILY LAW PROCEEDINGS

* * *

(2) UFC Cases: If a case has been accepted into Unified Family Court (UFC) for case management, motions shall be scheduled and heard in accordance with the Order upon Acceptance to Unified Family Court. See LFLR 7.

* * *

(6) Motions to Vacate Orders.

(A) An agreed order to vacate an order shall be presented without oral argument to the Ex Parte and Probate Department through the Clerk's office, unless the effect of the order would be to reinstate a case that has been dismissed or where the trial date has passed, in which case the agreed order shall be presented pursuant to LR 60.

(B) An agreed order to vacate a Clerk's dismissal so that parties may enter final orders shall be presented without oral argument to the Ex Parte and Probate Department through the Clerk's office.

(C) A motion to vacate an order signed by a judge shall be noted before that judge, unless the original order was entered by agreement or after a default, in which case the motion to vacate shall be noted before the Chief Civil/RJC Judge or in family

law cases involving children before the Chief Unified Family Court Judge.

(D) A motion to vacate an order signed by a commissioner shall be noted on the family law motions calendar.

* * *